

# Hong Kong's High Court Disqualifies Four More Legislators

July 21, 2017

On July 15, 2017, [Hong Kong's High Court](#) decided that the oaths of office taken by four members of Hong Kong's Legislative Council (Legco) on October 12, 2016, were invalid, and as a consequence, determined they were “disqualified from assuming or entering the Office of a Legco Member.” The ruling raises the number of disqualified Legco members to six, as two other members previously had been disqualified by the High Court on November 15, 2016 (see CRS Insight IN10605, *China and the Hong Kong High Court Issue Decisions on Legislative Council Controversy (Update)*). The four Members disqualified on July 15, 2017, were Lau Siu-lai, Nathan Law Kwun-chung, Leung Kwok-hung, and Yiu Chung-yim. The two Members disqualified on November 15, 2016, were Sixtus Baggio Leung Chung-hang and Yau Wai-ching.

The United States-Hong Kong Policy Act of 1992 (P.L. 102-383) states, “Support for democratization is a fundamental principle of United States foreign policy. As such, it naturally applies to United States policy toward Hong Kong.” The Hong Kong Human Rights and Democracy Act of 2017 (S. 417) would reaffirm that it is U.S. policy “to support the democratic aspirations of the people of Hong Kong,” and would prohibit the issuance of visas to anyone the President has identified as infringing the rights of Hong Kong residents to their freedoms of assembly, association, press, religion, and speech.

## The High Court Cases

The High Court ruled on December 2, 2016, that the oaths taken by the four Legco members were invalid according to [Hong Kong's Oaths and Declarations Ordinance](#) (ODO) and the National People's Congress Standing Committee (NPCSC) “[interpretation](#)” of [Article 104](#) of Hong Kong's Basic Law, issued on November 7, 2016. This latter decision was issued *after* the members had taken their oaths and *while* the High Court was considering its decision.

In its decision, the High Court determined that Lau, Law, Leung, and Yiu had failed to meet certain conditions specified in the NPCSC interpretation: (1) that the oath be taken “in exactly the same form and content as prescribed under Schedule 2 of the ODO”; (2) that it is done “solemnly and sincerely”; and (3) that the oath taker “sincerely believe in and strictly abide by the pledges in the oath.” The High Court also decided that “the adding of words or worded messages” prior to or after taking the oath constituted a failure to take the oath in exactly the same form and content. As such, the four had “declined” to take the oath and were disqualified as of October 12, 2016. The ruling also noted, “no arrangement shall be made for retaking the oath.” It also stipulated that Lau, Law, Leung, and Yiu pay the government's legal costs, estimated at 2-3 million Hong Kong dollars (\$250,000-\$400,000).

While the High Court's July 15, 2017, decision relied heavily on conditions stipulated in the NPCSC interpretation, its [November 15, 2016, decision](#) was based solely on the ODO. [Leung and Yau lost an initial appeal on November 30, 2016](#), and filed a subsequent appeal to Hong Kong's Court of Final Appeal; their case is scheduled to be heard on August 25, 2017.

[Lau, Law, Leung, and Yiu have not yet decided if they will appeal](#) the July 15 decision. The Justice Defense Fund, organized by the Hong Kong Professional Teachers Union, is [attempting to crowdfund](#) sufficient money to finance their appeal.

## Implications for Legco

Four of the six disqualified are members of new political parties (sometimes referred to as “localists”) that support the direct election of the Chief Executive and all Legco members by universal suffrage, greater autonomy for Hong Kong, and self-determination of the city's future relations with China. The remaining two—one a member of the League for Social Democrats, and the other an independent—also support democratic reforms and less interference from China's central government in Hong Kong's local administration.

The disqualifications leave Legco with 64 members, of which 40 are supporters of the “pro-Establishment” coalition (which generally supports the policies and positions of Hong Kong's Chief Executive and China's central government), 21 are backers of the “pan-democrat” coalition (which advocate democratic election reforms), and 3 are members of “localist” parties. As a result of the six disqualifications, the “pro-Establishment” Legco members have [the ability to change Legco's administrative rules](#) and prevent the “pan-democrats” from delaying or blocking legislation.

## More Legco Members Face Possible Removal from Office

At least 10 other pro-democracy Legco members theoretically could be disqualified either because of the manner in which they took their oaths of office or pending criminal charges. Chan Chi-chuen, Cheng Chung-tai, Fernando Cheung Chiu-hung, Eddie Chu Hoi-dick, Roy Kwong Chu-yu, Lam Cheuk-ting, Shiu Ka-chun, Wan Siu-kin, and Helena Wong Pik-wan [added words after their oaths](#), possibly violating the NPCSC's interpretation of Article 104. [Cheng and Chu have had their oaths challenged by constituents](#), and are awaiting a High Court hearing date. In addition, Cheung Chung-tai, Tanya Chan, and Shiu Ka-chun [face criminal charges](#), and could be removed from office if sentenced to one month or more in prison.

At least one pro-Establishment Legco member, [Wong Ting-kwong, could also be disqualified](#) under the NPCSC's reinterpretation of Article 104. Wong retook his oath on October 19, 2016, after omitting “Hong Kong” on his first attempt.

## Effort to Suppress Democracy?

Some pan-democrats and analysts claim that China's central government, with the support of the Hong Kong government, are attempting to [purge Legco of pro-democracy members](#). Besides challenging oaths of office or filing criminal charges, these commentators point to Hong Kong's [Electoral Affairs Commission's \(EAC\) decision to prohibit six “localist” candidates](#) from running in the September 2016 elections as further evidence of an effort to suppress democracy. It is uncertain if any of the six disqualified will be allowed to run in special elections to be held (dates to be determined), given the EAC's previous prohibitions.

Carrie Lam Cheng Yuet-ngor, Hong Kong's new Chief Executive, has stated that [she does not intend to file more suits](#) challenging the oaths of the remaining Legco members.

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